



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

September 15, 1975

The Honorable Kenneth D. Gaver, M. D.  
Commissioner  
Texas Department of Mental Health and  
Mental Retardation  
Box 12668, Capitol Station  
Austin, Texas 78711

Opinion No. H- 691

Re: Ability of Mental Health and  
Mental Retardation Patient Benefit  
Fund to borrow money against  
collateral of certificates of deposit  
in which the Fund is invested.

Dear Dr. Gaver:

You have requested our opinion concerning whether the trustee of the Patient Benefit Fund may, after placing the money in the Fund in certificates of deposit, pledge such certificates as collateral for loans. You explain that the Benefit Fund is maintained primarily in certificates of deposit in order to maximize the earnings of the Fund. When it becomes necessary to make unexpected expenditures from the Fund, it is financially preferable to obtain a loan rather than redeem a certificate before its date of maturity.

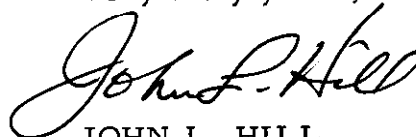
The Patient Benefit Fund is created in article 3183c, V. T. C. S. It may be expended "for the education or entertainment of the inmates of the institution, or for the actual expense of maintaining the fund at the institution." Sec. 1.

Assuming the trustee's action is prudent under the standard set in article 7425b-46, V. T. C. S., we see no meaningful distinction in this case between the direct expenditure of money from the Fund and the use of the Fund as collateral for a loan, where the proceeds of the loan are used for a purpose for which money from the Fund may be legally expended. Accordingly, we answer you question in the affirmative.

SUMMARY

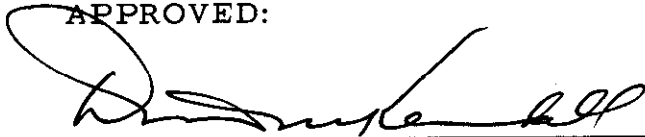
Provided the action is prudent under the standard set in article 7425b-46, V. T. C. S., the trustee of the Patient Benefit Fund may use certificates of deposit as collateral for a loan where the proceeds of the loan are used for a purpose for which money in the Fund may be legally expended.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

jwb